

CHAPTER 69-02-04 HEARINGS

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| Section | |
| 69-02-04-01 | Notice |
| 69-02-04-02 | Appearances |
| 69-02-04-03 | Continuance |
| 69-02-04-04 | Consolidation |
| 69-02-04-05 | Waiver of Hearing - Shortened Procedure |
| 69-02-04-06 | Order of Procedure |
| 69-02-04-07 | Hearing Officer |
| 69-02-04-08 | Appeal to Commission from Ruling of Hearing Officer |
| 69-02-04-09 | Oral Argument |
| 69-02-04-10 | Briefs - Proposed Findings of Fact and Conclusions of Law |

69-02-04-01. Notice. In those proceedings in which a hearing is to be held, the commission will assign a time and place for hearing. Notice of the hearing must be posted in the office of the commission, and must be served on the parties and other persons entitled to receive notice at least twenty days prior to the date set for the hearing except in cases of emergency or as otherwise provided by law.

In any proceeding, except rulemaking proceedings, involving the rights of persons who are members of the public generally, notice of hearing must be given by legal publication in the North Dakota daily newspaper of the affected area. Notice must be published at least twenty days prior to the date of the hearing.

An electric, gas, or telecommunications public utility shall provide individual customer notice as required below by billing insert, newsletter, or other appropriate method approved by the commission. The notice must indicate the place and date of the commencement of any hearing, informal hearing, or public input session that has been ordered by the commission, and that the public is invited to attend. Subject to the power of the commission to modify its contents and when applicable, the notice must include a summary sheet describing the absolute dollar and percentage impact of any proposed rate or price changes by the various classes of services offered by the utility and must include a list of the utility's business office locations where the proposed rate or price schedules and a comparison of present and proposed rates or prices can be examined by the public. The notice must also contain in bold type the following statement when applicable: The rate changes described in this notice have been requested by (specific utility).

For electric and gas utilities, individual customer notice is required for an application for approval of a rate increase, purchase or sale, merger, or acquisition filed by the utility, and applications by the utility for alternative regulation. For electric and gas utilities, the commission may require the utility to provide individual customer notice to potentially affected customers in other rate proceedings, complaint cases, and fuel and purchased gas adjustment proceedings.

For telecommunications utilities, individual customer notice is required for an application for a certificate of public convenience and necessity resulting from the sale, merger, or acquisition of an incumbent telecommunications company. The commission may require a telecommunications utility to provide individual customer notice to potentially affected customers in complaint cases.

The individual customer notices required by this section are separate from and in addition to any other customer notices required by law or rule, unless the commission authorizes the utility to satisfy multiple notice requirements with one notice.

History: Amended effective October 1, 1980; September 1, 1982; September 1, 1992; January 1, 2001.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 28-32-08, 49-01-07

69-02-04-02. Appearances. Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. The name and position of each member of the commission's staff participating in the hearing or investigation must be included in the record as an appearance.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-01-07

69-02-04-03. Continuance. After hearings are scheduled, continuances may be granted by the commission for good cause. A motion for continuance must be in writing, unless made at the commencement of a hearing, and must be filed with the commission⁴⁰, and served on each party. The motion must be made as far in advance of the date fixed for hearing as possible. The commission may effect a continuance upon its own motion. When a substantive hearing officer is designated, the substantive hearing officer may rule on continuances unless the commission directs otherwise.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-08.1, 49-01-07

69-02-04-04. Consolidation. The commission, upon its own motion or upon motion by any party, may order two or more proceedings involving a similar question

of law or facts to be consolidated for hearing where rights of the parties or the public interest will not be prejudiced by the consolidation.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-01-07

69-02-04-05. Waiver of hearing - Shortened procedure. In any proceeding in which the commission is authorized to act after opportunity for hearing, opportunity is afforded by service of notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or request for a hearing. If a protest or request for hearing is not filed within the time provided, the commission may dispose of the matter on the basis of the pleadings, other submittals, and the studies and recommendations of the staff. A party not requesting oral hearing in the party's pleading is deemed to have waived a hearing for the purpose of the decision, but not for the purpose of applying for rehearing with respect to the decision. If a person requests a hearing but does not show good cause, the commission may determine the matter without a hearing.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-11.1, 49-01-07

69-02-04-06. Order of procedure. In their respective hearing, the complainant, petitioner, or applicant shall open and close. In hearings on an order to show cause or involving investigation and suspension of rates, tariffs, or schedules, the respondent shall open and close. In all other hearings, the hearing officer may direct who shall open and close. When proceedings have been consolidated for hearing, the hearing officer shall designate who shall open and close. Intervenors shall follow the parties in whose behalf the intervention is made; where the intervention is not in support of an original party, the hearing officer shall designate at which stage the intervenor shall be heard. In proceedings where the evidence is materially within the knowledge or control of another party or participant, the foregoing order may be varied by the hearing officer.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-01-07

69-02-04-07. Hearing officer. When evidence is to be taken in a proceeding, either the commission, any member thereof, or one or more of its duly designated hearing officers may preside at the hearing. Hearing officers are designated as procedural or substantive.

1. Authority delegated. The hearing officer may:

a. Regulate the course of hearing.

- b. Administer oaths.
 - c. Issue subpoenas.
 - d. Take depositions or cause depositions to be taken.
 - e. Receive evidence.
 - f. Rule upon offers of proof.
 - g. Hold conferences before or during hearings.
 - h. Dispose of procedural matters so long as the disposition does not involve a final determination of proceedings.
 - i. Certify any question to the commission for its consideration and disposition.
 - j. Exclude evidence.
 - k. Authorize any party to furnish and serve designated late filed exhibits within a specified time after the close of the hearing.
 - l. Authorize discovery.
 - m. Request or require that the parties file briefs, memoranda, or proposed findings of fact and conclusions of law, and set a schedule for filing and serving same.
 - n. Take any other action necessary or appropriate to discharge the duties vested in the hearing officer.
2. Limitations. In addition, substantive hearing officers shall issue recommended findings of fact, conclusions of law, and orders. Substantive hearing officers may rule on continuances unless the commission directs otherwise.
 3. No hearing officer shall, in any proceeding for an adjudication required by statute to be determined on the record after opportunity for hearing, consult any person or party on any fact in issue unless the consultation is upon notice and opportunity for all parties to participate.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-08.1, 28-32-12.1, 28-32-12.2, 49-01-07

69-02-04-08. Appeal to commission from ruling of hearing officer. An appeal may be taken to the full commission from a ruling of a hearing officer during the course of a hearing only where extraordinary circumstances necessitate a prompt decision by the commission to prevent detriment to the public interest. Any offer of proof made in connection with an objection taken to any ruling of the hearing officer rejecting or excluding proffered oral testimony must consist of a statement of the substance of the evidence which the offering party contends would be adduced by such testimony; and, if the excluded evidence refers to or consists of documentary evidence, a copy of it must be marked for identification and constitutes part of the offer of proof.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-08.1, 49-01-07

69-02-04-09. Oral argument.

1. **Before hearing officer.** The hearing officer may set a time for the presentation of oral argument when time permits and the nature of the proceedings, the complexity or importance of the issues, and the public interest warrant. The hearing examiner may impose appropriate time limits. Oral arguments will be transcribed and bound with the transcript of testimony.
2. **Before the full commission.** A request to present oral argument before the full commission may be made at any time. The commission will set the time for oral argument, if allowed, and may impose time limits upon the arguments.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-08.1, 49-01-07

69-02-04-10. Briefs - Proposed findings of fact and conclusions of law.

1. Each party to a proceeding may file proposed findings of fact and conclusions of law, briefs, or memoranda of law. However, the hearing officer may direct any party to file proposed findings of fact and conclusions of law, briefs, or memoranda of law.
2. The hearing officer will fix the time for the filing and service of proposed findings of fact and conclusions of law, briefs, or memoranda of law, and the order in which each shall be filed.
3. When it is ordered that proposed findings of fact and conclusions of law, briefs, or memoranda of law be filed and served, and where the party that initiated the proceeding fails to file and serve by the due date, the

commission may dismiss the proceeding. Failure to file when due by an intervenor, protestant, or respondent may be considered a waiver of the right to participate further.

4. Exhibits should not be reproduced in a brief, but may be reproduced in an appendix to the brief. Every brief of more than twenty pages shall contain a subject index, with page references, and an alphabetical list of all citations with references to the pages where the citations appear. Briefs must be as concise as possible.
5. Briefs must be accompanied by a certificate showing service upon all parties who appeared at the hearing. An original and seven copies of each brief will be filed with the commission.
6. The time within which any act is required to be performed or may be performed will be computed in accordance with the North Dakota Rules of Civil Procedure.

History: Amended effective September 1, 1992.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-01-07